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MAILED

NOV 19 2009

OFFICE OF PETITIONS

In re Application of :
Josef Schwagmann :
Application No. 10/520,716 :
Filed: June 6, 2005 :
Attorney Docket No. 2002P10577WOUS :

ON PETITION

This is a decision on the petition, filed April 13, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." See 37 CFR 1.181(f).

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 11, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

In the present petition, petitioner requests that the Office withdraw the holding of abandonment. Specifically, petitioner states "The basis for the petition is that the time limit for responding to the outstanding office action has not expired, and a timely response is being filed concurrently herewith. A Notice of Appeal and a Petition for a Three Month Extension of Time was filed on September 11, 2008."

The final Office action mailed March 11, 2008 set a shortened statutory period for reply of three (3) months. Three month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on September 12, 2008.

The Office record show a response was received on September 11, 2008. However, this response was not entered. A courtesy copy of the September 22, 2008 advisory action accompanies this decision for petitioner's convenience.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).
- (2) The petition fee as set forth in 37 CFR 1.17(m), **\$1620.00 for a small entity;**
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the \$1620.00 petition fee.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$2350 extension of time submitted with the petition on April 13, 2009 was subsequent to the maximum extendable period for reply, this fee is unnecessary. Petitioner may apply \$1620 toward the petition fee and credit \$730 to petitioner's deposit account.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3210.



Irvin Dingle
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement; and a courtesy copy of the September 22, 2008 advisory action.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,716	06/06/2005	Josef Schwagmann	2002P10577WOUS	2595
29177	7590	09/22/2008	EXAMINER	
BELL, BOYD & LLOYD, LLP				KIM, TAE K
P.O. BOX 1135				
CHICAGO, IL 60690				
ART UNIT		PAPER NUMBER		
		2153		
MAIL DATE		DELIVERY MODE		
		09/22/2008 PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action <i>After the Filing of an Appeal Brief</i>	Application No. 10/520,716 Examiner TAE K. KIM	Applicant(s) SCHWAGMANN, JOSEF Art Unit 2153
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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 11 September 2008 is acknowledged.

1. The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

- a. The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).
- b. The affidavit or other evidence is not timely filed before the filing of an appeal brief. See 37 CFR 41.33(d)(2).

2. The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. Other: Applicant is attempting to amend the claims to include "quality of service" as monitored data within the system. Quality of service is a term known in the art that is related to packet loss within the transmission of information, which is a narrower limitation that falls within the broader limitation of "service quality." The Applicant clearly notes this distinction in the remarks beginning at the third paragraph of Pg. 8. The Applicant further states that this amendment "clearly distinguishes over the 'job performance' used for SLAs as described" in the prior art. Therefore, the scope of the claims have changed due to the amendment and thus, not entered.

/Glenton B. Burgess/
Supervisory Patent Examiner, Art Unit 2153